

FORTY-FIRST DAY - MARCH 11, 2004**LEGISLATIVE JOURNAL****NINETY-EIGHTH LEGISLATURE
SECOND SESSION****FORTY-FIRST DAY**

Legislative Chamber, Lincoln, Nebraska
Thursday, March 11, 2004

PRAYER

The prayer was offered by Senator Kruse.

ROLL CALL

Pursuant to adjournment, the Legislature met at 9:00 a.m., Senator Cudaback presiding.

The roll was called and all members were present except Senators Aguilar, Bromm, Engel, and Loudon who were excused; and Senators Maxwell, McDonald, Mossey, Smith, and Tyson who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the fortieth day was approved.

MESSAGE FROM THE GOVERNOR

March 11, 2004

President, Speaker Bromm
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Mr. President, Speaker Bromm and Senators:

Contingent upon your approval, the following individual was appointed to the Child Abuse Prevention Fund Board.

APPOINTEE:

Elba Cera, 15107 Summerwood Dr, Omaha NE 68137

The aforementioned name is respectfully submitted for your consideration.

Sincerely,

(Signed) Mike Johanns
Governor

web/

Enclosure

REPORT OF REGISTERED LOBBYISTS

Following is a list of all lobbyists who have registered as of March 10, 2004, in accordance with Section 49-1481, Revised Statutes of Nebraska. Additional lobbyists who have registered will be filed weekly.

(Signed) Patrick J. O'Donnell
Clerk of the Legislature

Schmit Industries, Inc.
Platte Valley Fuel Ethanol

REPORT

The following report was received by the Legislature:

Roads, Department of

Board of Public Roads Classifications and Standards Minutes for January 2004

COMMUNICATION

Received petition from the Douglas County Board of Commissioners adopted on March 9, 2004.

AMENDMENTS - Print in Journal

Senator D. Pederson filed the following amendment to LB 998:
AM2887

- 1 1. Insert the following new sections:
- 2 "Sec. 2. Section 44-2825, Revised Statutes Supplement,
- 3 2003, is amended to read:
- 4 44-2825. (1) The total amount recoverable under the
- 5 Nebraska Hospital-Medical Liability Act from any and all health
- 6 care providers and the Excess Liability Fund for any occurrence
- 7 resulting in any injury or death of a patient may not exceed (a)
- 8 five hundred thousand dollars for any occurrence on or before
- 9 December 31, 1984, (b) one million dollars for any occurrence after
- 10 December 31, 1984, and on or before December 31, 1992, (c) one
- 11 million two hundred fifty thousand dollars for any occurrence after
- 12 December 31, 1992, and on or before December 31, 2003, and (d) one
- 13 million seven hundred fifty thousand dollars for any occurrence

14 after December 31, 2003.

15 (2) A health care provider qualified under the act shall
16 not be liable to any patient or his or her representative who is
17 covered by the act for an amount in excess of ~~two~~ five hundred
18 thousand dollars for all claims or causes of action arising from
19 any occurrence during the period that the act is effective with
20 reference to such patient.

21 (3) Subject to the overall limits from all sources as
22 provided in subsection (1) of this section, any amount due from a
23 judgment or settlement which is in excess of the total liability of
24 all liable health care providers shall be paid from the Excess

1 Liability Fund pursuant to sections 44-2831 to 44-2833.

2 Sec. 7. Section 44-2832, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 44-2832. (1) The Director of Administrative Services
5 shall issue a warrant drawn on the fund in the amount of each claim
6 submitted by the director. All claims against the fund shall be
7 made on a voucher or other appropriate request by the director
8 after he or she has received:

9 (a) A certified copy of a final judgment in excess of ~~two~~
10 five hundred thousand dollars against a health care provider and in
11 excess of the amount recoverable from all health care providers;

12 (b) A certified copy of a court-approved settlement in
13 excess of ~~two~~ five hundred thousand dollars against a health care
14 provider and in excess of the amount recoverable from all health
15 care providers; or

16 (c) In case of claims based on primary insurance issued
17 by the risk manager under sections 44-2837 to 44-2839, a certified
18 copy of a final judgment or court-approved settlement requiring
19 payment from the fund.

20 (2) The amount paid from the fund for excess liability
21 when added to the payments by all health care providers may not
22 exceed the maximum amount recoverable pursuant to subsection (1) of
23 section 44-2825. The amount paid from the fund on account of a
24 primary insurance policy issued by the risk manager to a health
25 care provider under sections 44-2837 to 44-2839 may not exceed ~~two~~
26 five hundred thousand dollars for any one occurrence covered by
27 such policy under any circumstances.

1 Sec. 8. Section 44-2833, Revised Statutes Supplement,
2 2002, is amended to read:

3 44-2833. (1) If the insurer of a health care provider
4 shall agree to settle its liability on a claim against its insured
5 by payment of its policy limits of ~~two~~ five hundred thousand
6 dollars and the claimant shall demand an amount in excess thereof
7 for a complete and final release and if no other health care
8 provider is involved, the procedures prescribed in this section
9 shall be followed.

10 (2) A motion shall be filed by the claimant with the
11 court in which the action is pending against the health care

12 provider or, if no action is pending, the claimant shall file a
13 complaint in one of the district courts of the State of Nebraska,
14 seeking approval of an agreed settlement, if any, or demanding
15 payment of damages from the Excess Liability Fund.

16 (3) A copy of such motion or complaint shall be served on
17 the director, the health care provider, and the health care
18 provider's insurer and shall contain sufficient information to
19 inform the parties concerning the nature of the claim and the
20 additional amount demanded. The health care provider and his or
21 her insurer shall have a right to intervene and participate in the
22 proceedings.

23 (4) The director, with the consent of the health care
24 provider, may agree to a settlement with the claimant from the
25 Excess Liability Fund. Either the director or the health care
26 provider may file written objections to the payment of the amount
27 demanded. The agreement or objections to the payment demanded
1 shall be filed within twenty days after the motion or complaint is
2 filed.

3 (5) After the motion or complaint, agreement, and
4 objections, if any, have been filed, the judge shall set the matter
5 for trial as soon as practicable. The court shall give notice of
6 the trial to the claimant, the health care provider, and the
7 director.

8 (6) At the trial, the director, the claimant, and the
9 health care provider may introduce relevant evidence to enable the
10 court to determine whether or not the settlement should be approved
11 if it has been submitted on agreement without objections. If the
12 director, the health care provider, and the claimant shall be
13 unable to agree on the amount, if any, to be paid out of the Excess
14 Liability Fund, the amount of claimant's damages, if any, in excess
15 of the ~~two~~ five hundred thousand dollars already paid by the
16 insurer of the health care provider shall be determined at trial.

17 (7) The court shall determine the amount for which the
18 fund is liable and render a finding and judgment accordingly. In
19 approving a settlement or determining the amount, if any, to be
20 paid from the Excess Liability Fund in such a case, the court shall
21 consider the liability of the health care provider as admitted and
22 established by evidence.

23 (8) Any settlement approved by the court may not be
24 appealed. Any judgment of the court fixing damages recoverable in
25 any such contested proceeding shall be appealable pursuant to the
26 rules governing appeals in any other civil case."

27 2. On page 8, line 4, strike "section 44-2824" and all
1 amendments thereto and insert "sections 44-2824, 44-2832, and
2 44-2855"; and in line 5 after the first comma insert "section
3 44-2833, Revised Statutes Supplement, 2002," and after "sections"
4 insert "44-2825,".

5 3. In AM2697, on page 1, line 2, before the new matter
6 insert "(1)"; in line 6 after the period insert paragraphing and

- 7 "(2)"; after line 9 insert the following new subsection:
8 "(3) The changes made to sections 44-2825, 44-2832, and
9 44-2833 by this legislative bill apply commencing with policies
10 issued or renewed and risk-loss trust years which commence after
11 the operative date of this act."; and in line 12 strike "5" and
12 insert "6".
13 4. Renumber the remaining sections accordingly.

Senator Jones filed the following amendment to LB 1048:
AM3044

(Amendments to Standing Committee amendments, AM2851)

- 1 1. On page 8, strike beginning with the colon in line 18
2 through "The" in line 26 and insert "the".

Senator Jones filed the following amendment to LB 1048:
AM3045

(Amendments to Standing Committee amendments, AM2851)

- 1 1. On page 8, line 26; and page 9, line 18, strike "ten"
2 and insert "five".

Senator Jones filed the following amendment to LB 1048:
AM3042

- 1 1. Insert the following new section:
2 "Sec. 35. Each member of the board of a Class I school
3 district dissolved and attached to a Class II, III, IV, or VI
4 school district pursuant to sections 1 to 3 of this act shall have
5 the option to automatically become a member of the board of the
6 Class II, III, IV, or VI district to which the property owned by
7 such board member is attached. He or she shall exercise such
8 option by notifying in writing the secretary of the school board of
9 such Class II, III, IV, or VI district. If the member exercises
10 such option, he or she shall serve on the board of such Class II,
11 III, IV, or VI school district for two years or until the date on
12 which his or her term as a member of the Class I school board would
13 have expired, whichever occurs later.".
14 2. In the Standing Committee amendments, AM2851,
15 renumber section 35 as section 36.
16 3. Amend the operative date section so that the section
17 added by this legislative bill becomes operative on its effective
18 date.
19 4. Renumber the remaining sections and correct internal
20 references accordingly.

Senator Jones filed the following amendment to LB 1048:
AM3043

- 1 1. Insert the following new section:
2 "Sec. 4. When a Class I school district is dissolved and
3 merged into a Class II, III, IV, or VI school district pursuant to
4 sections 1 to 3 of this act, the school board of the Class II, III,

5 IV, or VI school district to which territory containing an
6 attendance center building of the former Class I school district is
7 attached shall keep such building open as a community meeting
8 place, shall maintain the building in a condition that allows it to
9 be safely used for such purpose, and shall not charge any rent or
10 fee for the use of such building. The board may establish a policy
11 containing reasonable requirements with respect to the use of such
12 building."
13 2. Amend the operative date section so that the section
14 added by this legislative bill becomes operative on its effective
15 date.
16 3. Renumber the remaining sections and correct internal
17 references accordingly.

BILL ON FINAL READING

The following bill was read and put upon final passage:

LEGISLATIVE BILL 16.

A BILL FOR AN ACT relating to business entities; to amend sections 21-2204, 21-2209, 21-2607, 21-2631, 21-2639, 67-454, 67-456, and 67-458, Reissue Revised Statutes of Nebraska; to change filing requirements for businesses engaged in professional services as prescribed; to harmonize provisions; and to repeal the original sections.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 40:

Baker	Combs	Hudkins	Mines	Schimek
Beutler	Connealy	Janssen	Pedersen, Dw.	Schrock
Bourne	Cudaback	Jensen	Pederson, D.	Stuhr
Brashear	Cunningham	Johnson	Preister	Stuthman
Brown	Erdman	Jones	Price	Synowiecki
Burling	Foley	Kremer	Quandahl	Thompson
Byars	Friend	Kruse	Raikes	Vrtiska
Chambers	Hartnett	Landis	Redfield	Wehrbein

Voting in the negative, 0.

Excused and not voting, 9:

Aguilar	Engel	Maxwell	Mossey	Tyson
Bromm	Louden	McDonald	Smith	

A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

MOTION - Return LB 625 to Select File

Senator Brown moved to return LB 625 to Select File for the following specific amendment:

FA1556

Strike the enacting clause.

Senator Brown withdrew her motion to return.

BILL ON FINAL READING

The following bill was read and put upon final passage:

LEGISLATIVE BILL 625. Senator Brown requested to pass over.

MOTION - Return LB 818 to Select File

Senator Chambers moved to return LB 818 to Select File for the following specific amendment:

FA1557

Strike the enacting clause.

Senator Chambers withdrew his motion to return.

BILLS ON FINAL READING

The following bills were read and put upon final passage:

LEGISLATIVE BILL 818.

A BILL FOR AN ACT relating to the Women's Health Initiative Advisory Council; to amend section 71-702, Reissue Revised Statutes of Nebraska; to clarify provisions; to change a termination date; and to repeal the original section.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 38:

Baker	Combs	Jensen	Pedersen, Dw.	Stuhr
Beutler	Connealy	Johnson	Pederson, D.	Stuthman
Bourne	Cudaback	Jones	Preister	Synowiecki
Brashear	Cunningham	Kremer	Price	Thompson
Brown	Foley	Kruse	Raikes	Vrtiska
Burling	Hartnett	Landis	Redfield	Wehrbein
Byars	Hudkins	Mines	Schimek	
Chambers	Janssen	Mossey	Schrock	

Voting in the negative, 0.

Present and not voting, 3:

Erdman	Friend	Quandahl
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Excused and not voting, 8:

Aguilar	Engel	Maxwell	Smith
Bromm	Louden	McDonald	Tyson

A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed.

LEGISLATIVE BILL 820. With Emergency.

A BILL FOR AN ACT relating to recall elections; to amend section 32-1306, Reissue Revised Statutes of Nebraska, and section 32-1303, Revised Statutes Supplement, 2003; to change provisions relating to providing notice; to repeal the original sections; and to declare an emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?' "

Voting in the affirmative, 41:

Baker	Conneally	Jensen	Preister	Synowiecki
Beutler	Cudaback	Johnson	Price	Thompson
Bourne	Cunningham	Jones	Quandahl	Tyson
Brashear	Erdman	Kremer	Raikes	Vrtiska
Brown	Foley	Kruse	Redfield	Wehrbein
Burling	Friend	Mines	Schimek	
Byars	Hartnett	Mossey	Schrock	
Chambers	Hudkins	Pedersen, Dw.	Stuhr	
Combs	Janssen	Pederson, D.	Stuthman	

Voting in the negative, 0.

Present and not voting, 1:

Landis

Excused and not voting, 7:

Aguilar	Engel	Maxwell	Smith
Bromm	Louden	McDonald	

A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

Dispense With Reading at Large

Pursuant to Rule 6, Section 8, the Legislature approved the dispensing of the reading at large of LB 821 with 36 ayes, 2 nays, 4 present and not voting, and 7 excused and not voting.

The following bill was put upon final passage:

LEGISLATIVE BILL 821.

A BILL FOR AN ACT relating to the Open Meetings Act; to amend sections 2-261, 28-731, 58-230, 66-1619, 71-121, 71-3406, 71-5176, 71-5705, 71-6224, 72-1704, 74-1308, 77-5005, 79-317, 79-554, 79-560, 79-561, 79-814.01, 79-832, 79-1239, 81-1505.03, 81-15,217, 81-1712, 84-1408 to 84-1410, 84-1414, 84-1502, 85-104, and 85-1502, Reissue Revised Statutes of Nebraska, sections 2-101, 2-238, 13-2515, 13-2517, 13-2801, 13-2812, 16-1037, 46-2,120, 50-307, 84-1411, 84-1412, 86-327, and 86-413, Revised Statutes Supplement, 2002, and sections 25-2937 and 39-1108, Revised Statutes Supplement, 2003; to name the act; to provide for applicability of the act; to redefine terms; to change penalty provisions; to harmonize provisions; and to repeal the original sections.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 42:

Baker	Connealy	Jensen	Pederson, D.	Stuthman
Beutler	Cudaback	Johnson	Preister	Synowiecki
Bourne	Cunningham	Jones	Price	Thompson
Brashear	Erdman	Kremer	Quandahl	Tyson
Brown	Foley	Kruse	Raikes	Vrtiska
Burling	Friend	Landis	Redfield	Wehrbein
Byars	Hartnett	Mines	Schimek	
Chambers	Hudkins	Mossey	Schrock	
Combs	Janssen	Pedersen, Dw.	Stuhr	

Voting in the negative, 0.

Excused and not voting, 7:

Aguilar	Engel	Maxwell	Smith
Bromm	Louden	McDonald	

A constitutional majority having voted in the affirmative, the bill was

declared passed and the title agreed to.

The following bills were read and put upon final passage:

LEGISLATIVE BILL 835.

A BILL FOR AN ACT relating to agriculture; to amend sections 81-2,165, 81-2,166, 81-2,167, 81-2,170, 81-2,171, 81-2,173, and 81-2,174, Reissue Revised Statutes of Nebraska; to change and eliminate provisions of the Nebraska Apiary Act; to repeal the original sections; and to outright repeal sections 81-2,172 and 81-2,177.01, Reissue Revised Statutes of Nebraska.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 39:

Baker	Connealy	Janssen	Pedersen, Dw.	Schrock
Bourne	Cudaback	Jensen	Pederson, D.	Stuhr
Brashear	Cunningham	Johnson	Preister	Stuthman
Brown	Erdman	Jones	Price	Synowiecki
Burling	Foley	Kremer	Quandahl	Thompson
Byars	Friend	Kruse	Raikes	Vrtiska
Chambers	Hartnett	Mines	Redfield	Wehrbein
Combs	Hudkins	Mossey	Schimek	

Voting in the negative, 0.

Present and not voting, 3:

Beutler	Landis	Tyson
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Excused and not voting, 7:

Aguilar	Engel	Maxwell	Smith
Bromm	Louden	McDonald	

A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

LEGISLATIVE BILL 836. With Emergency.

A BILL FOR AN ACT relating to the Dairy Industry Development Act; to amend section 2-3951, Reissue Revised Statutes of Nebraska, and section 2-3948, Revised Statutes Supplement, 2002; to change provisions relating to board members; to eliminate obsolete provisions; to harmonize provisions; to repeal the original sections; to outright repeal section 2-3964, Reissue Revised Statutes of Nebraska, and sections 2-3952, 2-3952.01, 2-3953, and 2-3954, Revised Statutes Supplement, 2002; and to declare an emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?' "

Voting in the affirmative, 41:

Baker	Connealy	Jensen	Preister	Synowiecki
Beutler	Cudaback	Johnson	Price	Thompson
Bourne	Cunningham	Jones	Quandahl	Tyson
Brashear	Erdman	Kremer	Raikes	Vrtiska
Brown	Foley	Landis	Redfield	Wehrbein
Burling	Friend	Mines	Schimek	
Byars	Hartnett	Mossey	Schrock	
Chambers	Hudkins	Pedersen, Dw.	Stuhr	
Combs	Janssen	Pederson, D.	Stuthman	

Voting in the negative, 0.

Present and not voting, 1:

Kruse

Excused and not voting, 7:

Aguilar	Engel	Maxwell	Smith
Bromm	Louden	McDonald	

A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

LEGISLATIVE BILL 878. With Emergency.

A BILL FOR AN ACT relating to motor carriers; to amend sections 75-363 and 75-364, Reissue Revised Statutes of Nebraska; to adopt updated federal Motor Carrier Safety Regulations and federal Hazardous Material Regulations; to repeal the original sections; and to declare an emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?' "

Voting in the affirmative, 42:

Baker	Connealy	Jensen	Pederson, D.	Stuthman
Beutler	Cudaback	Johnson	Preister	Synowiecki
Bourne	Cunningham	Jones	Price	Thompson
Brashear	Erdman	Kremer	Quandahl	Tyson
Brown	Foley	Kruse	Raikes	Vrtiska
Burling	Friend	Landis	Redfield	Wehrbein
Byars	Hartnett	Mines	Schimek	
Chambers	Hudkins	Mossey	Schrock	
Combs	Janssen	Pedersen, Dw.	Stuhr	

Voting in the negative, 0.

Excused and not voting, 7:

Aguilar	Engel	Maxwell	Smith
Bromm	Louden	McDonald	

A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

LEGISLATIVE BILL 911. With Emergency.

A BILL FOR AN ACT relating to motor vehicles; to amend section 60-529, Revised Statutes Supplement, 2002; to change provisions relating to proof of financial responsibility; to repeal the original section; and to declare an emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?' "

Voting in the affirmative, 41:

Baker	Connealy	Jensen	Pederson, D.	Synowiecki
Beutler	Cudaback	Johnson	Preister	Thompson
Bourne	Cunningham	Jones	Price	Tyson
Brashear	Erdman	Kremer	Quandahl	Vrtiska
Brown	Foley	Kruse	Raikes	Wehrbein
Burling	Friend	Landis	Schimek	
Byars	Hartnett	Mines	Schrock	
Chambers	Hudkins	Mossey	Stuhr	
Combs	Janssen	Pedersen, Dw.	Stuthman	

Voting in the negative, 0.

Present and not voting, 1:

Redfield

Excused and not voting, 7:

Aguilar	Engel	Maxwell	Smith
Bromm	Louden	McDonald	

A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

LEGISLATIVE BILL 915.

A BILL FOR AN ACT relating to the Administrative Procedure Act; to amend section 84-902, Reissue Revised Statutes of Nebraska; to change provisions relating to filings by state agencies; and to repeal the original section.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 43:

Baker	Conneally	Jensen	Pedersen, Dw.	Stuhr
Beutler	Cudaback	Johnson	Pederson, D.	Stuthman
Bourne	Cunningham	Jones	Preister	Synowiecki
Brashear	Erdman	Kremer	Price	Thompson
Brown	Foley	Kruse	Quandahl	Tyson
Burling	Friend	Landis	Raikes	Vrtiska
Byars	Hartnett	Maxwell	Redfield	Wehrbein
Chambers	Hudkins	Mines	Schimek	
Combs	Janssen	Mossey	Schrock	

Voting in the negative, 0.

Excused and not voting, 6:

Aguilar	Engel	McDonald
Bromm	Louden	Smith

A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

LEGISLATIVE BILL 927.

A BILL FOR AN ACT relating to municipal elections; to amend section 32-404, Reissue Revised Statutes of Nebraska; to eliminate municipal election laws applicable to certain municipalities; to harmonize provisions; to repeal the original section; and to outright repeal sections 19-3001 to 19-3003, 19-3005, 19-3006, 19-3007.01, 19-3011 to 19-3032, 19-3034, 19-3037, and 19-3040 to 19-3050, Reissue Revised Statutes of Nebraska, and section 19-3051, Revised Statutes Supplement, 2002.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 43:

Baker	Connealy	Jensen	Pedersen, Dw.	Stuhr
Beutler	Cudaback	Johnson	Pederson, D.	Stuthman
Bourne	Cunningham	Jones	Preister	Synowiecki
Brashear	Erdman	Kremer	Price	Thompson
Brown	Foley	Kruse	Quandahl	Tyson
Burling	Friend	Landis	Raikes	Vrtiska
Byars	Hartnett	Maxwell	Redfield	Wehrbein
Chambers	Hudkins	Mines	Schimek	
Combs	Janssen	Mossey	Schrock	

Voting in the negative, 0.

Excused and not voting, 6:

Aguilar	Engel	McDonald
Bromm	Louden	Smith

A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

LEGISLATIVE BILL 936.

A BILL FOR AN ACT relating to libraries; to amend section 51-213, Reissue Revised Statutes of Nebraska; to change annual report requirements; and to repeal the original section.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 43:

Baker	Connealy	Jensen	Pedersen, Dw.	Stuhr
Beutler	Cudaback	Johnson	Pederson, D.	Stuthman
Bourne	Cunningham	Jones	Preister	Synowiecki
Brashear	Erdman	Kremer	Price	Thompson
Brown	Foley	Kruse	Quandahl	Tyson
Burling	Friend	Landis	Raikes	Vrtiska
Byars	Hartnett	Maxwell	Redfield	Wehrbein
Chambers	Hudkins	Mines	Schimek	
Combs	Janssen	Mossey	Schrock	

Voting in the negative, 0.

Excused and not voting, 6:

Aguilar	Engel	McDonald
Bromm	Louden	Smith

A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

LEGISLATIVE BILL 937.

A BILL FOR AN ACT relating to cities of the first class; to amend section 16-696, Reissue Revised Statutes of Nebraska; to change voting provisions for the board of park commissioners; to harmonize provisions; and to repeal the original section.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 43:

Baker	Conneally	Jensen	Pedersen, Dw.	Stuhr
Beutler	Cudaback	Johnson	Pederson, D.	Stuthman
Bourne	Cunningham	Jones	Preister	Synowiecki
Brashear	Erdman	Kremer	Price	Thompson
Brown	Foley	Kruse	Quandahl	Tyson
Burling	Friend	Landis	Raikes	Vrtiska
Byars	Hartnett	Maxwell	Redfield	Wehrbein
Chambers	Hudkins	Mines	Schimek	
Combs	Janssen	Mossey	Schrock	

Voting in the negative, 0.

Excused and not voting, 6:

Aguilar	Engel	McDonald
Bromm	Louden	Smith

A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

LEGISLATIVE BILL 940. With Emergency.

A BILL FOR AN ACT relating to state government; to amend section 81-8,271.01, Reissue Revised Statutes of Nebraska, and section 43-260, Revised Statutes Supplement, 2002; to eliminate certain task forces, a commission, an implementation team, an advisory committee, a board, a center, and a fund and related provisions; to eliminate obsolete provisions; to harmonize provisions; to repeal the original sections; to outright repeal sections 51-602, 51-605 to 51-607, 66-1350, 68-1725.01, 74-922 to 74-925,

and 83-4,148 to 83-4,152, Reissue Revised Statutes of Nebraska, and sections 2-5201, 32-121, 43-3601 to 43-3603, 46-1302, 46-1303, 48-2401, 48-2402, 50-301 to 50-309, 51-601, 51-603, 51-604, and 81-2013.01 to 81-2013.04, Revised Statutes Supplement, 2002; and to declare an emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?' "

Voting in the affirmative, 43:

Baker	Connealy	Jensen	Pedersen, Dw.	Stuhr
Beutler	Cudaback	Johnson	Pederson, D.	Stuthman
Bourne	Cunningham	Jones	Preister	Synowiecki
Brashear	Erdman	Kremer	Price	Thompson
Brown	Foley	Kruse	Quandahl	Tyson
Burling	Friend	Landis	Raikes	Vrtiska
Byars	Hartnett	Maxwell	Redfield	Wehrbein
Chambers	Hudkins	Mines	Schimek	
Combs	Janssen	Mossey	Schrock	

Voting in the negative, 0.

Excused and not voting, 6:

Aguilar	Engel	McDonald
Bromm	Louden	Smith

A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

LEGISLATIVE BILL 947.

A BILL FOR AN ACT relating to amusement ride permits; to amend section 48-1805, Reissue Revised Statutes of Nebraska; to change the expiration date for permits; to provide an operative date; and to repeal the original section.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 43:

Baker	Connealy	Jensen	Pedersen, Dw.	Stuhr
Beutler	Cudaback	Johnson	Pederson, D.	Stuthman
Bourne	Cunningham	Jones	Preister	Synowiecki
Brashear	Erdman	Kremer	Price	Thompson
Brown	Foley	Kruse	Quandahl	Tyson
Burling	Friend	Landis	Raikes	Vrtiska
Byars	Hartnett	Maxwell	Redfield	Wehrbein
Chambers	Hudkins	Mines	Schimek	
Combs	Janssen	Mossey	Schrock	

Voting in the negative, 0.

Excused and not voting, 6:

Aguilar	Engel	McDonald
Bromm	Louden	Smith

A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

LEGISLATIVE BILL 950.

A BILL FOR AN ACT relating to the New Hire Reporting Act; to amend section 48-2303, Reissue Revised Statutes of Nebraska; to change report requirements; to provide an operative date; and to repeal the original section.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 43:

Baker	Connealy	Jensen	Pedersen, Dw.	Stuhr
Beutler	Cudaback	Johnson	Pederson, D.	Stuthman
Bourne	Cunningham	Jones	Preister	Synowiecki
Brashear	Erdman	Kremer	Price	Thompson
Brown	Foley	Kruse	Quandahl	Tyson
Burling	Friend	Landis	Raikes	Vrtiska
Byars	Hartnett	Maxwell	Redfield	Wehrbein
Chambers	Hudkins	Mines	Schimek	
Combs	Janssen	Mossey	Schrock	

Voting in the negative, 0.

Excused and not voting, 6:

Aguilar	Engel	McDonald
Bromm	Louden	Smith

A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

LEGISLATIVE BILL 961.

A BILL FOR AN ACT relating to the School Employees Retirement Act; to amend section 79-907, Reissue Revised Statutes of Nebraska; to change a mailing requirement for statements of information; to harmonize provisions; and to repeal the original section.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 42:

Baker	Cudaback	Johnson	Pederson, D.	Stuthman
Bourne	Cunningham	Jones	Preister	Synowiecki
Brashear	Erdman	Kremer	Price	Thompson
Brown	Foley	Kruse	Quandahl	Tyson
Burling	Friend	Landis	Raikes	Vrtiska
Byars	Hartnett	Maxwell	Redfield	Wehrbein
Chambers	Hudkins	Mines	Schimek	
Combs	Janssen	Mossey	Schrock	
Connealy	Jensen	Pedersen, Dw.	Stuhr	

Voting in the negative, 0.

Present and not voting, 1:

Beutler

Excused and not voting, 6:

Aguilar	Engel	McDonald
Bromm	Louden	Smith

A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

LEGISLATIVE BILL 1033. With Emergency.

A BILL FOR AN ACT relating to the Athletic Advisory Committee; to amend section 81-8,139.01, Reissue Revised Statutes of Nebraska; to change membership; to repeal the original section; and to declare an emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?' "

Voting in the affirmative, 43:

Baker	Connealy	Jensen	Pedersen, Dw.	Stuhr
Beutler	Cudaback	Johnson	Pederson, D.	Stuthman
Bourne	Cunningham	Jones	Preister	Synowiecki
Brashear	Erdman	Kremer	Price	Thompson
Brown	Foley	Kruse	Quandahl	Tyson
Burling	Friend	Landis	Raikes	Vrtiska
Byars	Hartnett	Maxwell	Redfield	Wehrbein
Chambers	Hudkins	Mines	Schimek	
Combs	Janssen	Mossey	Schrock	

Voting in the negative, 0.

Excused and not voting, 6:

Aguilar	Engel	McDonald
Bromm	Louden	Smith

A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

LEGISLATIVE BILL 1069. With Emergency.

A BILL FOR AN ACT relating to licensing of professions; to amend section 81-3451, Reissue Revised Statutes of Nebraska; to change provisions relating to engineers; to repeal the original section; and to declare an emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?'"

Voting in the affirmative, 42:

Baker	Connealy	Johnson	Pederson, D.	Stuthman
Beutler	Cudaback	Jones	Preister	Synowiecki
Bourne	Cunningham	Kremer	Price	Thompson
Brashear	Erdman	Kruse	Quandahl	Tyson
Brown	Foley	Landis	Raikes	Vrtiska
Burling	Friend	Maxwell	Redfield	Wehrbein
Byars	Hudkins	Mines	Schimek	
Chambers	Janssen	Mossey	Schrock	
Combs	Jensen	Pedersen, Dw.	Stuhr	

Voting in the negative, 0.

Present and not voting, 1:

Hartnett

Excused and not voting, 6:

Aguilar	Engel	McDonald
Bromm	Louden	Smith

A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

LEGISLATIVE BILL 1179.

A BILL FOR AN ACT relating to public meetings; to amend section 84-1410, Reissue Revised Statutes of Nebraska, and section 84-1411, Revised Statutes Supplement, 2002; to change provisions relating to electronic communications; and to repeal the original sections.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 39:

Baker	Combs	Hudkins	Mines	Redfield
Beutler	Connealy	Janssen	Mossey	Schimek
Bourne	Cudaback	Johnson	Pedersen, Dw.	Stuhr
Brashear	Cunningham	Jones	Pederson, D.	Stuthman
Brown	Erdman	Kremer	Preister	Thompson
Burling	Foley	Kruse	Price	Tyson
Byars	Friend	Landis	Quandahl	Vrtiska
Chambers	Hartnett	Maxwell	Raikes	

Voting in the negative, 0.

Present and not voting, 4:

Jensen	Schrock	Synowiecki	Wehrbein
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Excused and not voting, 6:

Aguilar	Engel	McDonald
Bromm	Louden	Smith

A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

MOTION - Return LR 211CA to Select File

Senator Erdman moved to return LR 211CA to Select File for the following

specific amendment:
AM3069

(Amendments to Final Reading copy)

1 1. Insert the following new sections:
2 "Sec. 2. At the general election in November 2004 the
3 following proposed amendment to the Constitution of Nebraska shall
4 be submitted to the electors of the State of Nebraska for approval
5 or rejection:
6 To amend Article VIII, section 1, and add a new section
7 14 to Article VIII:
8 VIII-1 "The necessary revenue of the state and its
9 governmental subdivisions shall be raised by taxation in such
10 manner as the Legislature may direct if the electors of the
11 affected jurisdiction approve such increased tax rates or new taxes
12 on income, property, or purchases of goods and services subject to
13 section 14 of this article. Notwithstanding Article I, section 16,
14 Article III, section 18, or Article VIII, section 4, of this
15 Constitution or any other provision of this Constitution to the
16 contrary: (1) Taxes shall be levied by valuation uniformly and
17 proportionately upon all real property and franchises as defined by
18 the Legislature except as otherwise provided in or permitted by
19 this Constitution; (2) tangible personal property, as defined by
20 the Legislature, not exempted by this Constitution or by
21 legislation, shall all be taxed at depreciated cost using the same
22 depreciation method with reasonable class lives, as determined by
23 the Legislature, or shall all be taxed by valuation uniformly and
1 proportionately; (3) the Legislature may provide for a different
2 method of taxing motor vehicles and may also establish a separate
3 class of motor vehicles consisting of those owned and held for
4 resale by motor vehicle dealers which shall be taxed in the manner
5 and to the extent provided by the Legislature and may also
6 establish a separate class for trucks, trailers, semitrailers,
7 truck-tractors, or combinations thereof, consisting of those owned
8 by residents and nonresidents of this state, and operating in
9 interstate commerce, and may provide reciprocal and proportionate
10 taxation of such vehicles. The tax proceeds from motor vehicles
11 taxed in each county shall be allocated to the county and the
12 cities, villages, and school districts of such county; (4) the
13 Legislature may provide that agricultural land and horticultural
14 land, as defined by the Legislature, shall constitute a separate
15 and distinct class of property for purposes of taxation and may
16 provide for a different method of taxing agricultural land and
17 horticultural land which results in values that are not uniform and
18 proportionate with all other real property and franchises but which
19 results in values that are uniform and proportionate upon all
20 property within the class of agricultural land and horticultural
21 land; (5) the Legislature may enact laws to provide that the value
22 of land actively devoted to agricultural or horticultural use shall
23 for property tax purposes be that value which such land has for

24 agricultural or horticultural use without regard to any value which
25 such land might have for other purposes or uses; (6) the
26 Legislature may prescribe standards and methods for the
27 determination of the value of real property at uniform and
1 proportionate values; (7) in furtherance of the purposes for which
2 such a law of the United States has been adopted, whenever there
3 exists a law of the United States which is intended to protect a
4 specifically designated type, use, user, or owner of property or
5 franchise from discriminatory state or local taxation, such
6 property or franchise shall constitute a separate class of property
7 or franchise under the laws of the State of Nebraska, and such
8 property or franchise may not be taken into consideration in
9 determining whether taxes are levied by valuation uniformly or
10 proportionately upon any property or franchise, and the Legislature
11 may enact laws which statutorily recognize such class and which tax
12 or exempt from taxation such class of property or franchise in such
13 manner as it determines; and (8) the Legislature may provide that
14 livestock shall constitute a separate and distinct class of
15 property for purposes of taxation and may further provide for
16 reciprocal and proportionate taxation of livestock located in this
17 state for only part of a year. Each actual property tax rate
18 levied for a governmental subdivision shall be the same for all
19 classes of taxed property and franchises. Taxes uniform as to
20 class of property or the ownership or use thereof may be levied by
21 valuation or otherwise upon classes of intangible property as the
22 Legislature may determine, and such intangible property held in
23 trust or otherwise for the purpose of funding pension,
24 profit-sharing, or other employee benefit plans as defined by the
25 Legislature may be declared exempt from taxation. Taxes other than
26 property taxes may be authorized by law. Existing revenue laws
27 shall continue in effect until changed by the Legislature."

1 VIII-14 "Any increase in tax rates existing on January 1,
2 2005, or new taxes on income, property, or purchases of goods and
3 services adopted by the Legislature or any governmental subdivision
4 of the state on or after January 1, 2005, shall be placed before
5 the electors at an election for approval before the tax rate
6 increase or new tax becomes effective. If the tax is a statewide
7 tax, the proposed tax rate increase or new tax shall be submitted
8 to the electors of the state. If the tax is a local tax, the
9 proposed tax rate increase or new tax shall be submitted to the
10 electors of the governmental subdivision. If a majority of votes
11 cast are in favor of the proposed tax rate increase or new tax, it
12 shall become effective. If a majority of votes cast are not in
13 favor of the proposed tax rate increase or new tax, it shall not
14 become effective. Property tax increases due to a voter-approved
15 bond issue or a tax levy limitation override are exempt from the
16 voter approval requirement of this section.".

17 Sec. 4. The proposed amendment shall be submitted to the
18 electors in the manner prescribed by the Constitution of Nebraska,

19 Article XVI, section 1, with the following ballot language:
 20 "A constitutional amendment to require elector approval
 21 of increases in tax rates or new taxes on and after
 22 January 1, 2005.
 23 For
 24 Against".
 25 2. Renumber the remaining section accordingly.

Senator Hudkins requested a ruling of the Chair on whether the Erdman amendment is germane to the resolution.

The Chair ruled the Erdman amendment is not germane to the resolution.

Senator Erdman withdrew his motion to return.

RESOLUTION ON FINAL READING

The following resolution was read and put upon final passage:

LEGISLATIVE RESOLUTION 211CA.

THE MEMBERS OF THE NINETY-EIGHTH LEGISLATURE OF NEBRASKA, SECOND SESSION, RESOLVE THAT:

Section 1. At the general election in November 2004 the following proposed amendment to the Constitution of Nebraska shall be submitted to the electors of the State of Nebraska for approval or rejection:

To amend Article III, sections 10 and 14:

III-10 "Beginning with the year 1975, regular sessions of the Legislature shall be held annually, commencing at 10 a.m. on the first Wednesday after the first Monday in January of each year. The duration of regular sessions held shall not exceed ninety legislative days in odd-numbered years unless extended by a vote of four-fifths of all members elected to the Legislature, and shall not exceed sixty legislative days in even-numbered years unless extended by a vote of four-fifths of all members elected to the Legislature. Bills and resolutions under consideration by the Legislature upon adjournment of a regular session held in an odd-numbered year may be considered at the next regular session, as if there had been no such adjournment. ~~The Lieutenant Governor shall preside, but shall vote only when the Legislature is equally divided.~~

A majority of the members elected to the Legislature shall constitute a quorum. ~~The~~ The Legislature shall determine the rules of its proceedings, ~~shall~~ shall and be the judge of the election, returns, and qualifications of its members, and shall choose its own officers, including a Speaker to preside, ~~when the Lieutenant Governor shall be absent, incapacitated, or shall act as Governor.~~

No member shall be expelled except by a vote of two-thirds of all members elected to the Legislature, and no member shall be twice expelled for the same offense. The Legislature may punish by imprisonment any person not a member thereof who shall be guilty of disrespect to the

Legislature by disorderly or contemptuous behavior in its presence, but no such imprisonment shall extend beyond twenty-four hours at one time, unless the person shall persist in such disorderly or contemptuous behavior."

III-14 "Every bill and resolution shall be read by title when introduced, and a printed copy thereof provided for the use of each member. The bill and all amendments thereto shall be printed and presented before the vote is taken upon its final passage and shall be read at large unless three-fifths of all the members elected to the Legislature vote not to read the bill and all amendments at large. No vote upon the final passage of any bill shall be taken until five legislative days after its introduction nor until it has been on file for final reading and passage for at least one legislative day. No bill shall contain more than one subject, and the subject shall be clearly expressed in the title. No law shall be amended unless the new act contains the section or sections as amended and the section or sections so amended shall be repealed. The ~~Lieutenant Governor, or the Speaker if acting as presiding officer~~, shall sign, in the presence of the Legislature while it is in session and capable of transacting business, all bills and resolutions passed by the Legislature."

Sec. 2. The proposed amendment shall be submitted to the electors in the manner prescribed by the Constitution of Nebraska, Article XVI, section 1, with the following ballot language:

"A constitutional amendment to remove the Lieutenant Governor and designate the Speaker as presiding officer of the Legislature.

For

Against".

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the resolution pass?' "

Voting in the affirmative, 42:

Baker	Connealy	Jensen	Pederson, D.	Stuthman
Beutler	Cudaback	Johnson	Preister	Synowiecki
Bourne	Cunningham	Jones	Price	Thompson
Brashear	Erdman	Kremer	Quandahl	Tyson
Brown	Foley	Kruse	Raikes	Vrtiska
Burling	Friend	Maxwell	Redfield	Wehrbein
Byars	Hartnett	Mines	Schimek	
Chambers	Hudkins	Mossey	Schrock	
Combs	Janssen	Pedersen, Dw.	Stuhr	

Voting in the negative, 0.

Present and not voting, 1:

Landis

Excused and not voting, 6:

Aguilar	Engel	McDonald
Bromm	Louden	Smith

A constitutional three-fifths majority having voted in the affirmative, the resolution was declared passed for the general election.

BILLS ON FINAL READING

The following bills were read and put upon final passage:

LEGISLATIVE BILL 75.

A BILL FOR AN ACT relating to sheriffs; to amend section 23-1701.01, Reissue Revised Statutes of Nebraska; to change eligibility requirements for office; and to repeal the original section.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 41:

Baker	Cunningham	Jones	Preister	Synowiecki
Beutler	Erdman	Kremer	Price	Thompson
Bourne	Foley	Kruse	Quandahl	Tyson
Brashear	Friend	Landis	Raikes	Vrtiska
Brown	Hartnett	Maxwell	Redfield	Wehrbein
Byars	Hudkins	Mines	Schimek	
Combs	Janssen	Mossey	Schrock	
Connealy	Jensen	Pedersen, Dw.	Stuhr	
Cudaback	Johnson	Pederson, D.	Stuthman	

Voting in the negative, 0.

Present and not voting, 2:

Burling	Chambers
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Excused and not voting, 6:

Aguilar	Engel	McDonald
Bromm	Louden	Smith

A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

LEGISLATIVE BILL 279.

A BILL FOR AN ACT relating to motor vehicle registration; to amend section 60-308, Revised Statutes Supplement, 2002, and sections 60-311

and 60-320, Revised Statutes Supplement, 2003; to provide for six-year issuance of license plates; to change provisions relating to record keeping; to change fees; to harmonize provisions; and to repeal the original sections.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 40:

Baker	Connealy	Janssen	Mines	Schimek
Beutler	Cudaback	Jensen	Mossey	Stuhr
Bourne	Cunningham	Johnson	Pedersen, Dw.	Stuthman
Brashear	Erdman	Jones	Preister	Synowiecki
Burling	Foley	Kremer	Price	Thompson
Byars	Friend	Kruse	Quandahl	Tyson
Chambers	Hartnett	Landis	Raikes	Vrtiska
Combs	Hudkins	Maxwell	Redfield	Wehrbein

Voting in the negative, 3:

Brown	Pederson, D.	Schrock
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Excused and not voting, 6:

Aguilar	Engel	McDonald
Bromm	Louden	Smith

A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

LEGISLATIVE BILL 279A.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 279, Ninety-eighth Legislature, Second Session, 2004; and to provide for transfers.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 39:

Baker	Cudaback	Jensen	Mossey	Stuhr
Bourne	Cunningham	Johnson	Pedersen, Dw.	Stuthman
Brashear	Erdman	Jones	Preister	Synowiecki
Burling	Foley	Kremer	Price	Thompson
Byars	Friend	Kruse	Quandahl	Tyson
Chambers	Hartnett	Landis	Raikes	Vrtiska
Combs	Hudkins	Maxwell	Redfield	Wehrbein
Connealy	Janssen	Mines	Schimek	

Voting in the negative, 2:

Brown Pederson, D.

Present and not voting, 2:

Beutler Schrock

Excused and not voting, 6:

Aguilar	Engel	McDonald
Bromm	Louden	Smith

A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

LEGISLATIVE BILL 323.

A BILL FOR AN ACT relating to political subdivisions; to amend section 23-272, Reissue Revised Statutes of Nebraska, and section 32-608, Revised Statutes Supplement, 2003; to change provisions relating to regular meetings of certain county boards and payment of filing fees for certain candidates; to provide operative dates; and to repeal the original sections.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 43:

Baker	Connealy	Jensen	Pedersen, Dw.	Stuhr
Beutler	Cudaback	Johnson	Pederson, D.	Stuthman
Bourne	Cunningham	Jones	Preister	Synowiecki
Brashear	Erdman	Kremer	Price	Thompson
Brown	Foley	Kruse	Quandahl	Tyson
Burling	Friend	Landis	Raikes	Vrtiska
Byars	Hartnett	Maxwell	Redfield	Wehrbein
Chambers	Hudkins	Mines	Schimek	
Combs	Janssen	Mossey	Schrock	

Voting in the negative, 0.

Excused and not voting, 6:

Aguilar	Engel	McDonald
Bromm	Louden	Smith

A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

Dispense With Reading at Large

Pursuant to Rule 6, Section 8, the Legislature approved the dispensing of the reading at large of LB 560 with 35 ayes, 2 nays, 6 present and not voting, and 6 excused and not voting.

The following bill was put upon final passage:

LEGISLATIVE BILL 560. With Emergency.

A BILL FOR AN ACT relating to the Department of Motor Vehicles; to amend sections 37-1201, 60-6,324, 60-1805, and 81-8,219, Reissue Revised Statutes of Nebraska, sections 13-910, 30-24,125, 37-1291, 60-108, 60-110, 60-111.01, 60-129, 60-302.05, 60-308, 60-311.01, 60-484.02, 60-1901, 60-1904, and 60-1907, Revised Statutes Supplement, 2002, and sections 60-106, 60-139, 60-301, 60-311.02, 60-364, 60-462.01, and 60-483, Revised Statutes Supplement, 2003; to provide for transfer of certificates of title in certain decedents' estates; to provide for salvage and nontransferable certificates of title for motorboats; to provide for disposition of abandoned motorboats; to change provisions relating to the State Boat Act, assembled all-terrain vehicle and minibike certificates of title, motor vehicle certificates of title and registration, salvage branded certificates of title, and registration of snowmobiles and camper units; to redefine terms; to change fees for motor vehicle record requests; to adopt updated federal regulations; to provide for the release of certain driver's license information; to provide powers and duties related to abandoned all-terrain vehicles and minibikes; to provide penalties; to harmonize provisions; to provide operative dates; to repeal the original sections; and to declare an emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?'"

Voting in the affirmative, 43:

Baker	Connealy	Jensen	Pedersen, Dw.	Stuhr
Beutler	Cudaback	Johnson	Pederson, D.	Stuthman
Bourne	Cunningham	Jones	Preister	Synowiecki
Brashear	Erdman	Kremer	Price	Thompson
Brown	Foley	Kruse	Quandahl	Tyson
Burling	Friend	Landis	Raikes	Vrtiska
Byars	Hartnett	Maxwell	Redfield	Wehrbein
Chambers	Hudkins	Mines	Schimek	
Combs	Janssen	Mossey	Schrock	

Voting in the negative, 0.

Excused and not voting, 6:

Aguilar	Engel	McDonald
Bromm	Louden	Smith

A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

The following bill was read and put upon final passage:

LEGISLATIVE BILL 560A.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 560, Ninety-eighth Legislature, Second Session, 2004.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 42:

Baker	Cudaback	Johnson	Pederson, D.	Stuthman
Beutler	Cunningham	Jones	Preister	Synowiecki
Brashear	Erdman	Kremer	Price	Thompson
Brown	Foley	Kruse	Quandahl	Tyson
Burling	Friend	Landis	Raikes	Vrtiska
Byars	Hartnett	Maxwell	Redfield	Wehrbein
Chambers	Hudkins	Mines	Schimek	
Combs	Janssen	Mossey	Schrock	
Connealy	Jensen	Pedersen, Dw.	Stuhr	

Voting in the negative, 0.

Present and not voting, 1:

Bourne

Excused and not voting, 6:

Aguilar	Engel	McDonald
Bromm	Louden	Smith

A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

WITHDRAW - Amendment to LB 449

Senator Chambers withdrew his pending amendment, FA1492, found on page 792, to LB 449.

BILLS ON FINAL READING**Dispense With Reading at Large**

Pursuant to Rule 6, Section 8, the Legislature approved the dispensing of the reading at large of LB 449 with 37 ayes, 2 nays, 4 present and not voting, and 6 excused and not voting.

The following bill was put upon final passage:

LEGISLATIVE BILL 449.

A BILL FOR AN ACT relating to the environment; to amend sections 81-15,181 to 81-15,186, Reissue Revised Statutes of Nebraska, sections 81-1505 and 81-1532, Revised Statutes Supplement, 2002, and section 81-15,248, Revised Statutes Supplement, 2003; to define and redefine terms; to change provisions relating to environmental rules and regulations and air pollution fees; to create a fund; to change provisions of the Remedial Action Plan Monitoring Act; to change provisions relating to system construction and registration under the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act; to harmonize provisions; and to repeal the original sections.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 42:

Baker	Connealy	Jensen	Pedersen, Dw.	Stuhr
Beutler	Cudaback	Johnson	Pederson, D.	Synowiecki
Bourne	Cunningham	Jones	Preister	Thompson
Brashear	Erdman	Kremer	Price	Tyson
Brown	Foley	Kruse	Quandahl	Vrtiska
Burling	Friend	Landis	Raikes	Wehrbein
Byars	Hartnett	Maxwell	Redfield	
Chambers	Hudkins	Mines	Schimek	
Combs	Janssen	Mossey	Schrock	

Voting in the negative, 0.

Present and not voting, 1:

Stuthman

Excused and not voting, 6:

Aguilar	Engel	McDonald
Bromm	Louden	Smith

A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

The following bill was read and put upon final passage:

LEGISLATIVE BILL 449A.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 449, Ninety-eighth Legislature, Second Session, 2004.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 42:

Baker	Connealy	Jensen	Pedersen, Dw.	Stuhr
Beutler	Cudaback	Johnson	Pederson, D.	Synowiecki
Bourne	Cunningham	Jones	Preister	Thompson
Brashear	Erdman	Kremer	Price	Tyson
Brown	Foley	Kruse	Quandahl	Vrtiska
Burling	Friend	Landis	Raikes	Wehrbein
Byars	Hartnett	Maxwell	Redfield	
Chambers	Hudkins	Mines	Schimek	
Combs	Janssen	Mossey	Schrock	

Voting in the negative, 0.

Present and not voting, 1:

Stuthman

Excused and not voting, 6:

Aguilar	Engel	McDonald
Bromm	Louden	Smith

A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

ANNOUNCEMENT

The Chair announced today is Senator Raikes' birthday.

GENERAL FILE

LEGISLATIVE BILL 315. Title read. Considered.

The Standing Committee amendment, AM1034, found on page 1181, First

Session, 2003, was adopted with 26 ayes, 0 nays, 17 present and not voting, and 6 excused and not voting.

Advanced to E & R for review with 25 ayes, 0 nays, 18 present and not voting, and 6 excused and not voting.

LEGISLATIVE BILL 837. Title read. Considered.

Advanced to E & R for review with 25 ayes, 0 nays, 18 present and not voting, and 6 excused and not voting.

LEGISLATIVE BILL 824. Title read. Considered.

Senator Erdman renewed his pending amendment, AM2890, found on page 983.

The Erdman amendment was adopted with 27 ayes, 0 nays, 16 present and not voting, and 6 excused and not voting.

Advanced to E & R for review with 28 ayes, 0 nays, 15 present and not voting, and 6 excused and not voting.

LEGISLATIVE BILL 997. Title read. Considered.

The Standing Committee amendment, AM2293, found on page 397, was adopted with 25 ayes, 0 nays, 18 present and not voting, and 6 excused and not voting.

Senator Beutler offered the following amendment:
AM3061

- 1 1. On page 2, line 27; and page 5, line 2, after "by"
- 2 insert "conspicuously".

The Beutler amendment was adopted with 25 ayes, 0 nays, 18 present and not voting, and 6 excused and not voting.

Advanced to E & R for review with 26 ayes, 0 nays, 17 present and not voting, and 6 excused and not voting.

STANDING COMMITTEE REPORTS

Judiciary

The Judiciary Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointment(s) be confirmed by the Legislature and suggests a record vote.

Crime Victim's Reparations Committee
Scott Arnold
Scot Ford

VOTE: Aye: Senators Brashear, Chambers, Foley, Mines, Mossey, Dw. Pedersen, Quandahl, and Tyson. Nay: None. Absent: None.

The Judiciary Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointment(s) be confirmed by the Legislature and suggests a record vote.

Community Corrections Council

Scot Adams
William Burgess
Catherine Cook
Aileen Gruendel
Julie Hippen
Robert Lindemeier
Joe Kelly

VOTE: Aye: Senators Brashear, Chambers, Foley, Mines, Mossey, Dw. Pedersen, Quandahl, and Tyson. Nay: None. Absent: None.

The Judiciary Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointment(s) be confirmed by the Legislature and suggests a record vote.

Board of Parole

James Pearson
Kenneth J. Vampola

VOTE: Aye: Senators Brashear, Chambers, Foley, Mines, Mossey, Dw. Pedersen, Quandahl, and Tyson. Nay: None. Absent: None.

LEGISLATIVE BILL 203. Placed on General File.

LEGISLATIVE BILL 670. Placed on General File.

LEGISLATIVE BILL 788. Placed on General File.

LEGISLATIVE BILL 1085. Placed on General File.

LEGISLATIVE BILL 1101. Placed on General File.

LEGISLATIVE BILL 875. Placed on General File as amended.

Standing Committee amendment to LB 875:

AM2871

- 1 1. Insert the following new section:
- 2 "Section 1. Section 28-1463.05, Reissue Revised Statutes
- 3 of Nebraska, is amended to read:
- 4 28-1463.05. (1) It shall be unlawful for a person to
- 5 knowingly possess with intent to rent, sell, deliver, distribute,
- 6 trade, or provide to any person any visual depiction of sexually
- 7 explicit conduct which has a child as one of its participants or
- 8 portrayed observers.
- 9 (2) Any person who violates this section shall be guilty

10 of a Class ~~IV~~ IIIA felony for each offense."

11 2. On page 3, line 23, after "Original" insert "section
12 28-1463.05, Reissue Revised Statutes of Nebraska, and"; and in line
13 24 strike "is" and insert "are".

14 3. Renumber the remaining sections accordingly.

LEGISLATIVE BILL 876. Placed on General File as amended.

(Standing Committee amendment, AM2883, is printed separately and available in the Bill Room, Room 1104.)

LEGISLATIVE BILL 887. Placed on General File as amended.

Standing Committee amendment to LB 887:

AM2618

1 1. On page 2, line 4, strike the new matter; and strike
2 beginning with "or" in line 20 through line 26 and insert "or (b)
3 fifty percent of the appellant's net worth. If an appellee proves
4 by a preponderance of the evidence that an appellant is dissipating
5 or diverting assets outside the ordinary course of business to
6 avoid the payment of a judgment, the court may enter any orders
7 necessary to protect the appellee and require the appellant to
8 provide a bond, deposit of the United States Government bonds, or
9 cash deposit up to and including the amount required under
10 subdivision (1)(a) of this section.".

11 2. On page 3, lines 14 and 23; and page 4, line 7,
12 strike beginning with "not" through "dollars" and insert "not
13 exceeding fifty percent of the appellant's net worth".

LEGISLATIVE BILL 943. Placed on General File as amended.

Standing Committee amendment to LB 943:

AM2935

1 1. Strike original section 2 and insert the following
2 new sections:

3 "Section 1. Section 28-101, Revised Statutes Supplement,
4 2002, is amended to read:

5 28-101. Sections 28-101 to 28-1348 and sections 2 and 3
6 of this act shall be known and may be cited as the Nebraska
7 Criminal Code.

8 Sec. 2. (1) A person commits the offense of
9 strangulation if the person knowingly or intentionally impedes the
10 normal breathing or circulation of the blood of another person by
11 applying pressure on the throat or neck of the other person.

12 (2) Except as provided in subsection (3) of this section,
13 strangulation is a Class IV felony.

14 (3) Strangulation is a Class III felony if:

15 (a) The person used or attempted to use a dangerous
16 instrument while committing the offense;

17 (b) The person caused serious bodily injury to the other
18 person while committing the offense; or

19 (c) The person has been previously convicted of

20 strangulation.

21 (4) It is an affirmative defense that an act constituting
22 strangulation was the result of a legitimate medical procedure.

23 Sec. 3. (1) No person shall knowingly solicit, coax,
24 entice, or lure or attempt to solicit, coax, entice, or lure (a) a
25 child sixteen years of age or younger or (b) a peace officer who is
26 believed by such person to be a child sixteen years of age or
27 younger, by means of a computer as that term is defined in section
28 28-1343, to engage in an act which would be in violation of
29 sections 28-317 to 28-321.

30 (2) A person who violates this section is guilty of a
31 Class III felony. If a person who violates this section has
32 previously been convicted of a violation of this section or section
33 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, or 28-317
34 to 28-321, the person is guilty of a Class II felony.

35 Sec. 4. Section 28-318, Reissue Revised Statutes of
36 Nebraska, is amended to read:

37 28-318. As used in sections 28-317 to 28-321, unless the
38 context otherwise requires:

39 (1) Actor means a person accused of sexual assault;

40 (2) Intimate parts means the genital area, groin, inner
41 thighs, buttocks, or breasts;

42 (3) Past sexual behavior means sexual behavior other than
43 the sexual behavior upon which the sexual assault is alleged;

44 (4) Serious personal injury means great bodily injury or
45 disfigurement, extreme mental anguish or mental trauma, pregnancy,
46 disease, or loss or impairment of a sexual or reproductive organ;

47 (5) Sexual contact means the intentional touching of the
48 victim's sexual or intimate parts or the intentional touching of
49 the victim's clothing covering the immediate area of the victim's
50 sexual or intimate parts. Sexual contact shall also mean the
51 touching by the victim of the actor's sexual or intimate parts or
52 the clothing covering the immediate area of the actor's sexual or
53 intimate parts when such touching is intentionally caused by the
54 actor. Sexual contact shall include only such conduct which can be
55 reasonably construed as being for the purpose of sexual arousal or
56 gratification of either party. Sexual contact shall also include
57 the touching of a child with the actor's sexual or intimate parts
58 on any part of the child's body for purposes of sexual assault of a
59 child under section 28-320.01;

60 (6) Sexual penetration means sexual intercourse in its
61 ordinary meaning, cunnilingus, fellatio, anal intercourse, or any
62 intrusion, however slight, of any part of the actor's or victim's
63 body or any object manipulated by the actor into the genital or
64 anal openings of the victim's body which can be reasonably
65 construed as being for nonmedical or nonhealth purposes. Sexual
66 penetration shall not require emission of semen;

67 (7) Victim means the person alleging to have been
68 sexually assaulted;

18 (8) Without consent means:

19 (a)(i) The victim was compelled to submit due to the use
20 of force or threat of force or coercion, or (ii) the victim
21 expressed a lack of consent through words, or (iii) the victim
22 expressed a lack of consent through conduct, or (iv) the consent,
23 if any was actually given, was the result of the actor's deception
24 as to the identity of the actor or the nature or purpose of the act
25 on the part of the actor;

26 (b) The victim need only resist, either verbally or
27 physically, so as to make the victim's refusal to consent genuine
1 and real and so as to reasonably make known to the actor the
2 victim's refusal to consent; and

3 (c) A victim need not resist verbally or physically where
4 it would be useless or futile to do so; and

5 (9) Force or threat of force means (a) the use of
6 physical force which overcomes the victim's resistance or (b) the
7 threat of physical force, express or implied, against the victim or
8 a third person that places the victim in fear of death or in fear
9 of serious personal injury to the victim or a third person where
10 the victim reasonably believes that the actor has the present or
11 future ability to execute the threat.

12 Sec. 5. Section 28-1463.05, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 28-1463.05. (1) It shall be unlawful for a person to
15 knowingly possess with intent to rent, sell, deliver, distribute,
16 trade, or provide to any person any visual depiction of sexually
17 explicit conduct which has a child as one of its participants or
18 portrayed observers.

19 (2) Any person who violates this section shall be guilty
20 of a Class ~~IV~~ IIIA felony for each offense.

21 Sec. 7. Section 29-4003, Revised Statutes Supplement,
22 2002, is amended to read:

23 29-4003. (1) Except as provided in subsection (2) of
24 this section, the Sex Offender Registration Act shall apply to any
25 person who on or after January 1, 1997:

26 (a) Pleads guilty to or is found guilty of:

27 (i) Kidnapping of a minor pursuant to section 28-313,
1 except when the person is the parent of the minor and was not
2 convicted of any other offense in this section;

3 (ii) False imprisonment of a minor pursuant to section
4 28-314 or 28-315;

5 (iii) Sexual assault pursuant to section 28-319 or
6 28-320;

7 (iv) Sexual assault of a child pursuant to section
8 28-320.01;

9 (v) Sexual assault of a vulnerable adult pursuant to
10 subdivision (1)(c) of section 28-386;

11 (vi) Incest of a minor pursuant to section 28-703;

12 (vii) Pandering of a minor pursuant to section 28-802;

- 13 (viii) Visual depiction of sexually explicit conduct of a
14 child pursuant to section 28-1463.03 or 28-1463.05;
- 15 (ix) Knowingly possessing any visual depiction of
16 sexually explicit conduct which has a child as one of its
17 participants or portrayed observers pursuant to section 28-813.01;
18 (x) Criminal child enticement pursuant to section 28-311;
19 ~~or~~
- 20 ~~(x)~~ (xi) Child enticement by means of a computer pursuant
21 to section 3 of this act; or
22 (xii) Attempt, solicitation, or conspiracy to commit an
23 offense listed in subdivisions (1)(a)(i) through ~~(1)(a)(ix)~~
24 ~~(1)(a)(xi)~~ of this section;
- 25 (b) Enters the state and has pleaded guilty to or has
26 been found guilty of any offense that is substantially equivalent
27 to a registrable offense under subdivision (1)(a) of this section
1 by any state, territory, commonwealth, or other jurisdiction of the
2 United States, by the United States Government, or by court martial
3 or other military tribunal; or
- 4 (c) Is incarcerated in a jail, a penal or correctional
5 facility, or any other public or private institution or is under
6 probation or parole as a result of pleading guilty to or being
7 found guilty of a registrable offense under subdivision (1)(a) or
8 (b) of this section prior to January 1, 1997.
- 9 (2) In the case of a person convicted of a violation of
10 section 28-311, 28-313, 28-314, or 28-315, the convicted person
11 shall be subject to the Sex Offender Registration Act, unless the
12 sentencing court determines at the time of sentencing, in light of
13 all the facts, that the convicted person is not subject to the act.
14 The sentencing court shall make such determination part of the
15 sentencing order.
- 16 (3) A person appealing a conviction of a registrable
17 offense under this section shall be required to comply with the act
18 during the appeals process.
- 19 Sec. 8. Original sections 28-318, 28-1463.05, and
20 29-110, Reissue Revised Statutes of Nebraska, and sections 28-101
21 and 29-4003, Revised Statutes Supplement, 2002, are repealed.
- 22 Sec. 9. Since an emergency exists, this act takes effect
23 when passed and approved according to law."
- 24 2. On page 5, after line 5, insert the following new
25 subsection:
26 "(10) The changes made to this section by this
27 legislative bill shall apply to offenses committed prior to the
1 effective date of this act for which the statute of limitations has
2 not expired as of such date and to offenses committed on or after
3 such date.".
- 4 3. Renumber the remaining section accordingly.

AM2633

- 1 1. On page 2, line 8, strike "(a)"; strike beginning
- 2 with the last "or" in line 8 through "person" in line 9; and in
- 3 line 20 after "procedure" insert "or a legitimate law enforcement
- 4 procedure utilized by a peace officer to subdue or restrain another
- 5 person within the scope of such peace officer's official duties".

LEGISLATIVE BILL 1012. Placed on General File as amended.

Standing Committee amendment to LB 1012:

AM2956

- 1 1. Strike the original section and insert the following
- 2 new section:
- 3 "Section 1. (1) Any person who owns, maintains, or
- 4 installs anhydrous ammonia equipment, uses anhydrous ammonia for
- 5 any lawful purpose, sells anhydrous ammonia for any lawful
- 6 purposes, or transports anhydrous ammonia in a manner prescribed by
- 7 law shall not be liable to any person who tampers with, or assists
- 8 in tampering with, such anhydrous ammonia, or such anhydrous
- 9 ammonia equipment, for personal injury, wrongful death, or any
- 10 other economic or noneconomic damages arising out of such
- 11 tampering, unless such liability is a result of the willful,
- 12 wanton, reckless, or intentional acts or omissions of such person.
- 13 (2) For purposes of this section:
- 14 (a) Anhydrous ammonia equipment means any equipment used
- 15 in the application of anhydrous ammonia for agricultural purposes
- 16 that meets all applicable safety requirements established by state
- 17 and federal statutes and regulations or any container or storage
- 18 facility used to store anhydrous ammonia in a manner that meets all
- 19 applicable safety requirements established by state and federal
- 20 statutes and regulations; and
- 21 (b) Tampering with anhydrous ammonia means intentionally,
- 22 knowingly, and unlawfully gaining access or attempting to gain
- 23 access to anhydrous ammonia or anhydrous ammonia equipment."

LEGISLATIVE BILL 1046. Placed on General File as amended.

Standing Committee amendment to LB 1046:

AM2907

- 1 1. Strike the original section and insert the following
- 2 new section:
- 3 "Section 1. (1) Any manufacturer, distributor, or seller
- 4 of a food or nonalcoholic beverage intended for human consumption
- 5 shall not be subject to civil liability for personal injury or
- 6 wrongful death based on an individual's consumption of food or
- 7 nonalcoholic beverage in cases in which liability is premised upon
- 8 the individual's weight gain or obesity alleged to be the result of
- 9 his or her long-term consumption of a particular kind or type of
- 10 food or nonalcoholic beverage.
- 11 (2) For purposes of this section, long-term consumption
- 12 means the cumulative effect of the consumption of a particular kind

13 or type of food or nonalcoholic beverage and not the effect of a
14 single instance of consumption.

15 (3) This section shall not apply to:

16 (a) A claim that a manufacturer, distributor, or seller
17 of a food or nonalcoholic beverage intended for human consumption
18 knowingly violated a federal or state statute applicable to the
19 manufacturing, marketing, distribution, advertisement, labeling, or
20 sale of the food or nonalcoholic beverage, and the violation was
21 the proximate cause of the weight gain or obesity;

22 (b) A claim for breach of contract or express warranty in
23 connection with the purchase of food or nonalcoholic beverages; or

24 (c) A claim regarding the sale of food that is
1 adulterated under the Federal Food, Drug, and Cosmetic Act, 21
2 U.S.C. 342.

3 (4) This section is applicable to all claims existing or
4 actions pending or filed on or after the effective date of this
5 act, unless a trial or retrial with regard to the civil action has
6 commenced as of the effective date of this act.".

LEGISLATIVE BILL 1058. Placed on General File as amended.

Standing Committee amendment to LB 1058:

AM2882

1 1. On page 2, line 23, after "any" insert "reasonably
2 foreseeable"; and in line 24 strike "such towing" and insert "the
3 hookup, towing, or disengagement of the motor vehicle to or from
4 the towing vehicle".

LEGISLATIVE BILL 1182. Placed on General File as amended.

Standing Committee amendment to LB 1182:

AM2853

1 1. On page 2, line 12, after "may" insert ", after
2 consultation with a representative sampling of the lawyers of the
3 judicial district".

LEGISLATIVE BILL 1207. Placed on General File as amended.

Standing Committee amendment to LB 1207:

AM2906

1 1. Insert the following new sections:
2 "Sec. 4. In bankruptcy and in the collection of a money
3 judgment, the full amount of any federal or state earned income tax
4 credit refund shall be exempt from attachment, garnishment, or
5 other legal or equitable process and from all claims of creditors.

6 Sec. 5. Section 25-1565, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 25-1565. ~~When an execution against the property of a~~ At
9 any time after the entry of judgment against the judgment debtor,
10 or one of several debtors in the same judgment, is issued to the
11 sheriff of a county where the debtor resides, or if the debtor does
12 not reside in the state, to the sheriff of the county where the

13 judgment was rendered, or a transcript of a judgment has been
14 filed, and is returned unsatisfied in whole or in part action, the
15 judgment creditor is entitled to an order from the county court or
16 the district court of the county ~~to~~ (1) in which the ~~execution was~~
17 ~~issued~~ debtor resides, (2) if the debtor does not reside in the
18 state, where judgment was rendered, or (3) in which a transcript of
19 judgment has been filed, requiring the debtor to appear and answer
20 concerning his or her property before the judge of such court or a
21 referee appointed by the judge of such court at a time and place
22 specified in the order within the county to which the ~~execution~~
23 order was issued.

24 Sec. 6. Section 25-1916, Revised Statutes Supplement,
1 2002, is amended to read:

2 25-1916. No appeal in any case shall operate as a
3 supersedeas unless the appellant or appellants within thirty days
4 after the entry of such judgment, decree, or final order execute to
5 the adverse party a bond with one or more sureties, make a deposit
6 of United States Government bonds with the clerk, or in lieu
7 thereof make a cash deposit with the clerk for the benefit of the
8 adverse party as follows:

9 (1) When the judgment, decree, or final order appealed
10 from directs the payment of money, the bond, deposit of ~~or~~ United
11 States Government bonds, or cash deposit shall be the lesser of (a)
12 ~~in~~ the amount of the judgment, decree, or final order and the
13 taxable court costs in the district court, plus the estimated
14 amount of interest that will accrue on the judgment, decree, or
15 final order between its date and the final determination of the
16 cause in the Court of Appeals or Supreme Court and the estimated
17 amount of the costs of appeal, such estimated interest to accrue
18 and estimated court costs to be determined by the trial court, ~~such~~
19 ~~supersedeas~~ or (b) fifty percent of the appellant's net worth. If
20 an appellee proves by a preponderance of the evidence that an
21 appellant is dissipating or diverting assets outside the ordinary
22 course of business to avoid the payment of a judgment, the court
23 may enter any orders necessary to protect the appellee and require
24 the appellant to provide a bond, deposit of the United States
25 Government bonds, or cash deposit up to and including the amount
26 required under subdivision (1)(a) of this section.

27 Such bond, United States Government bond, or cash deposit
1 ~~to~~ shall be conditioned that the appellant or appellants will
2 prosecute such appeal without delay and pay all condemnation money
3 and costs which may be found against him, her, or them on the final
4 determination of the cause in the Court of Appeals or Supreme
5 Court. When ; except that when a cash deposit is made, United
6 States Government bonds are deposited, or a bond is provided; which
7 is written by a corporate surety company authorized to do business
8 within the State of Nebraska; ~~which~~ and the cash deposit, United
9 States Government bond, or supersedeas bond is approved by the
10 trial court in which the judgment was rendered and filed in the

11 court, the general lien of the judgment shall be dissolved;
12 (2) When the judgment, decree, or final order directs the
13 execution of a conveyance or other instrument, the bond, deposit of
14 United States Government bonds, or cash deposit shall be in such
15 sum, not exceeding fifty percent of the appellant's net worth, as
16 shall be prescribed by the district court, or judge thereof in
17 vacation, conditioned that the appellant or appellants will
18 prosecute such appeal without delay and will abide and perform the
19 judgment or decree rendered or final order which shall be made by
20 the Court of Appeals or Supreme Court in the cause;

21 (3) When the judgment, decree, or order directs the sale
22 or delivery of possession of real estate, the bond, deposit of
23 United States Government bonds, or cash deposit shall be in such
24 sum, not exceeding fifty percent of the appellant's net worth, as
25 the court, or judge thereof in vacation, shall prescribe,
26 conditioned that the appellant or appellants will prosecute such
27 appeal without delay, will not during the pendency of such appeal
1 commit or suffer to be committed any waste upon such real estate,
2 and will pay all costs and all rents or damages to such real estate
3 which may accrue during the pendency of such appeal and until the
4 appellee is legally restored thereto; and

5 (4) When the judgment, decree, or final order dissolves
6 or modifies any order of injunction which has been or hereafter may
7 be granted, the supersedeas bond, deposit of United States
8 Government bonds, or cash deposit shall be in such reasonable sum,
9 not exceeding fifty percent of the appellant's net worth, as the
10 court or judge thereof in vacation shall prescribe, conditioned
11 that the appellant or appellants will prosecute such appeal without
12 delay and will pay all costs which may be found against him, her,
13 or them on the final determination of the cause in the Court of
14 Appeals or Supreme Court. ~~Such~~ ~~and such~~ supersedeas bond,
15 deposit of United States Government bonds, or cash deposit shall
16 stay the doing of the act or acts sought to be restrained by the
17 suit and continue such injunction in force until the case is heard
18 and finally determined in the Court of Appeals or Supreme Court.
19 The undertaking given upon the allowance of the injunction shall be
20 and remain in effect until it is finally decided whether or not the
21 injunction ought to have been granted.

22 The changes made to this section by this legislative bill
23 shall apply to all cases pending on or filed on or after the
24 effective date of this act.

25 Sec. 7. Section 25-21,223, Revised Statutes Supplement,
26 2003, is amended to read:

27 25-21,223. The summons shall be issued and directed with
1 a copy of the complaint attached to the summons, shall state the
2 cause of the complaint, the time and place of trial of the action
3 for possession, and the answer day for other causes of action, and
4 shall notify the defendant that if he or she fails to appear
5 judgment shall be entered against him or her. The summons may be

6 served and returned as ~~in other cases or by any person~~ provided in
7 sections 25-505.01 to 25-516.01, except that the summons shall be
8 served within three days, excluding nonjudicial days, from the date
9 of its issuance and shall be returnable within five days, excluding
10 nonjudicial days, from the date of its issuance. If service cannot
11 be made with reasonable diligence under such sections, service may
12 be made by any person by leaving a copy of the summons at the
13 detained premises and mailing a copy by first-class mail to the
14 defendant's last-known address. The person making the service
15 shall file with the court an affidavit stating with particularity
16 the manner in which he or she made the service and, if service was
17 not made as provided in sections 25-505.01 to 25-516.01, the
18 reasons why service under such sections was unsuccessful. Trial of
19 the action for possession shall be held not less than ten nor more
20 than fourteen days after the date of issuance of the summons.

21 Sec. 12. Section 25-2301.02, Revised Statutes

22 Supplement, 2002, is amended to read:

23 25-2301.02. (1) An application to proceed in forma
24 pauperis shall be granted unless there is an objection that the
25 party filing the application: (a) Has sufficient funds to pay
26 costs, fees, or security or (b) is asserting legal positions which
27 are frivolous or malicious. The objection to the application shall
1 be made within thirty days after the filing of the application or
2 at any time if the ground for the objection is that the initial
3 application was fraudulent. Such objection may be made by the
4 court on its own motion or on the motion of any interested person.
5 The motion objecting to the application shall specifically set
6 forth the grounds of the objection. An evidentiary hearing shall
7 be conducted on the objection unless the objection is by the court
8 on its own motion on the grounds that the applicant is asserting
9 legal positions which are frivolous or malicious. If no hearing is
10 held, the court shall provide a written statement of its reasons,
11 findings, and conclusions for denial of the applicant's application
12 to proceed in forma pauperis which shall become a part of the
13 record of the proceeding. If an objection is sustained, the party
14 filing the application shall have thirty days after the ruling or
15 issuance of the statement to proceed with an action or appeal upon
16 payment of fees, costs, or security notwithstanding the subsequent
17 expiration of any statute of limitations or deadline for appeal.
18 In any event, the court shall not deny an application on the basis
19 that the appellant's legal positions are frivolous or malicious if
20 to do so would deny a defendant his or her constitutional right to
21 appeal in a felony case.

22 (2) In the event that an application to proceed in forma
23 pauperis is denied and an appeal is taken therefrom, the aggrieved
24 party may make application for a transcript of the hearing on in
25 forma pauperis eligibility. Upon such application, the court shall
26 order the transcript to be prepared and the cost shall be paid by
27 the county in the same manner as other claims are paid. The

1 appellate court shall review the decision denying in forma pauperis
2 eligibility de novo on the record based on the transcript of the
3 hearing or the written statement of the court.
4 Sec. 39. The Revisor of Statutes shall assign section 4
5 of this act to Chapter 25, article 15."
6 2. On page 18, line 10, strike "that the".
7 3. On page 35, line 14, after "sections" insert
8 "25-1565,"; in line 18 strike "and"; in line 19 after the third
9 comma insert "25-1916," and before "25-2740" insert "25-2301.02,";
10 and in line 20 before "are" insert "and section 25-21,223, Revised
11 Statutes Supplement, 2003,".
12 4. Renumber the remaining sections accordingly.

(Signed) Kermit A. Brashear, Chairperson

REFERENCE COMMITTEE REPORT

The Legislative Council Executive Board submits the following report:

Cera, Elba - Child Abuse Prevention Fund Board - Health and Human Services

(Signed) Pat Engel, Chairperson
Legislative Council, Executive Board

GENERAL FILE

LEGISLATIVE BILL 890. Title read. Considered.

The Standing Committee amendment, AM2327, found on page 416, was adopted with 31 ayes, 0 nays, 12 present and not voting, and 6 excused and not voting.

Advanced to E & R for review with 32 ayes, 0 nays, 11 present and not voting, and 6 excused and not voting.

LEGISLATIVE BILL 845. Title read. Considered.

Advanced to E & R for review with 28 ayes, 0 nays, 15 present and not voting, and 6 excused and not voting.

LEGISLATIVE BILL 884. Title read. Considered.

Advanced to E & R for review with 25 ayes, 0 nays, 18 present and not voting, and 6 excused and not voting.

LEGISLATIVE BILL 980. Title read. Considered.

Advanced to E & R for review with 25 ayes, 0 nays, 18 present and not voting, and 6 excused and not voting.

LEGISLATIVE BILL 1099. Title read. Considered.

The Standing Committee amendment, AM2345, found on page 437, was adopted with 25 ayes, 0 nays, 18 present and not voting, and 6 excused and not voting.

Advanced to E & R for review with 27 ayes, 0 nays, 16 present and not voting, and 6 excused and not voting.

LEGISLATIVE BILL 955. Title read. Considered.

The Standing Committee amendment, AM2365, found on page 461, was adopted with 25 ayes, 0 nays, 18 present and not voting, and 6 excused and not voting.

Advanced to E & R for review with 27 ayes, 0 nays, 16 present and not voting, and 6 excused and not voting.

LEGISLATIVE BILL 902. Title read. Considered.

Senators Wehrbein and Beutler offered the following amendment:
AM3070

- 1 1. On page 2, lines 12 and 13, strike "a member of the
- 2 Legislative Council" and insert "the Legislative Performance Audit
- 3 Committee in the course of the committee's official duties and".

The Wehrbein-Beutler amendment was adopted with 27 ayes, 0 nays, 14 present and not voting, and 8 excused and not voting.

Advanced to E & R for review with 29 ayes, 0 nays, 12 present and not voting, and 8 excused and not voting.

LEGISLATIVE BILL 939. Title read. Considered.

Advanced to E & R for review with 25 ayes, 0 nays, 14 present and not voting, and 10 excused and not voting.

LEGISLATIVE BILL 832. Title read. Considered.

Senator Schrock withdrew his pending amendment, AM2673, found on page 654.

Senator Schrock offered the following amendment:
AM3067

- 1 1. Strike section 1.
- 2 2. On page 2, lines 20 and 22, strike "technical

3 assistance and services" and insert "services and technical
4 assistance".

5 3. Amend the repealer and renumber the remaining
6 sections accordingly.

The Schrock amendment was adopted with 27 ayes, 0 nays, 11 present and not voting, and 11 excused and not voting.

Advanced to E & R for review with 28 ayes, 0 nays, 10 present and not voting, and 11 excused and not voting.

LEGISLATIVE BILL 914. Title read. Considered.

The Standing Committee amendment, AM2363, found on page 501, was adopted with 26 ayes, 0 nays, 12 present and not voting, and 11 excused and not voting.

Advanced to E & R for review with 25 ayes, 0 nays, 13 present and not voting, and 11 excused and not voting.

LEGISLATIVE BILL 846. Title read. Considered.

Senator Beutler offered the following amendment:

FA1558

On page 2, line 13 strike 'trustee' and 'settlor'

The Beutler amendment was adopted with 26 ayes, 0 nays, 9 present and not voting, and 14 excused and not voting.

Advanced to E & R for review with 25 ayes, 0 nays, 10 present and not voting, and 14 excused and not voting.

LEGISLATIVE BILL 1004. Title read. Considered.

Advanced to E & R for review with 25 ayes, 0 nays, 10 present and not voting, and 14 excused and not voting.

LEGISLATIVE BILL 1002. Title read. Considered.

Advanced to E & R for review with 25 ayes, 0 nays, 10 present and not voting, and 14 excused and not voting.

LEGISLATIVE BILL 819. Title read. Considered.

Advanced to E & R for review with 25 ayes, 0 nays, 11 present and not voting, and 13 excused and not voting.

LEGISLATIVE BILL 1118. Title read. Considered.

The Standing Committee amendment, AM2494, found on page 582, lost with 0 ayes, 17 nays, 17 present and not voting, and 15 excused and not voting.

Senator Beutler withdrew his pending amendment, AM2424, found on page 497.

Senator Beutler moved for a call of the house. The motion prevailed with 21 ayes, 0 nays, and 28 not voting.

Advanced to E & R for review with 25 ayes, 0 nays, 9 present and not voting, and 15 excused and not voting.

The Chair declared the call raised.

LEGISLATIVE BILL 1107. Title read. Considered.

Advanced to E & R for review with 27 ayes, 0 nays, 7 present and not voting, and 15 excused and not voting.

LEGISLATIVE BILL 1149. Title read. Considered.

Senator Baker offered the following amendment:
AM3054

- 1 1. Strike original section 2 and insert the following
- 2 new section:
- 3 "Sec. 4. The following section is outright repealed:
- 4 Section 37-528, Revised Statutes Supplement, 2002."
- 5 2. On page 6, strike beginning with "section" in line 5
- 6 through the first comma in line 6.
- 7 3. Renumber the remaining sections accordingly.

The Baker amendment was adopted with 25 ayes, 0 nays, 8 present and not voting, and 16 excused and not voting.

Advanced to E & R for review with 25 ayes, 0 nays, 8 present and not voting, and 16 excused and not voting.

LEGISLATIVE BILL 826. Title read. Considered.

The Standing Committee amendment, AM2606, found on page 615, was adopted with 25 ayes, 0 nays, 8 present and not voting, and 16 excused and not voting.

Advanced to E & R for review with 25 ayes, 0 nays, 8 present and not voting, and 16 excused and not voting.

LEGISLATIVE BILL 727. Title read. Considered.

The Standing Committee amendment, AM2571, found on page 628, was adopted with 29 ayes, 0 nays, 7 present and not voting, and 13 excused and not voting.

Advanced to E & R for review with 28 ayes, 0 nays, 8 present and not voting, and 13 excused and not voting.

RESOLUTIONS

LEGISLATIVE RESOLUTION 255. Introduced by Stuhr, 24.

PURPOSE: The purpose of this study is to examine the creation of a medical COLA-type retirement benefit for retired members of the School Retirement System of the State of Nebraska. The study will examine the adequacy of benefits for retired members of the retirement system, and the effect of adopting a medical COLA retirement benefit to address benefit inadequacies, if any.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-EIGHTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Nebraska Retirement Systems Committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.

2. That the committee shall upon the conclusion of its study make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.

Referred to the Executive Board.

LEGISLATIVE RESOLUTION 256. Introduced by Stuhr, 24.

PURPOSE: The purpose of this study is to examine the creation of Internal Revenue Code Section 401(A)-type annuities by school boards or boards of education, and the impact of such annuities on the collection of social security and on the retirement benefits under the School Retirement System of the State of Nebraska. The study will examine the effect of the Internal Revenue Code provisions upon the retirement system and how such annuities may affect retirement benefits.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-EIGHTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Nebraska Retirement Systems Committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.

2. That the committee shall upon the conclusion of its study make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.

Referred to the Executive Board.

AMENDMENTS - Print in Journal

Senators Bourne and Synowiecki filed the following amendment to LB 559: AM3051

(Amendments to Final Reading copy)

- 1 1. On page 9, lines 10 and 24, strike "IV felony" and
- 2 insert "I misdemeanor".

Senator Cunningham filed the following amendment to LB 1005:

(Amendment, AM3034, is printed separately and available in the Bill Room, Room 1104.)

UNANIMOUS CONSENT - Add Cointroducer

Senator Price asked unanimous consent to have her name added as cointroducer to LB 1002. No objections. So ordered.

VISITORS

Visitors to the Chamber were Girl Scout Cadet Troop 158 and leader from Maxwell and Gothenburg; Jean Muckel, Doris Galbraith, Lillian Dudley, and June Fritz from Crete; 62 fourth-grade students and teacher from Ashland-Greenwood Elementary School; 44 fourth-grade students and teacher from Crete Elementary School; Dr. Bill Palmer from Omaha; 66 fourth-grade students and teacher from Crete Elementary School; and Kory, Kyle, and Larry Pesek from Omaha.

The Doctor of the Day was Dr. Jaime Dodge from Callaway.

ADJOURNMENT

At 1:37 p.m., on a motion by Senator Price, the Legislature adjourned until 9:00 a.m., Tuesday, March 16, 2004.

Patrick J. O'Donnell
Clerk of the Legislature